



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 634**

IN THE MATTER OF JOSEPH S. TEVALD

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Joseph S. Tevald pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On April 14, 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Tevald. The Commission has concluded its inquiry and, on April 4, 2001, found reasonable cause to believe that Tevald violated G.L. c. 268A, §23(b)(3).

The Commission and Tevald now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Tevald is a selectman in the Town of Newbury, an office he has held since 1987. As a member of the Board of Selectmen, Tevald also serves on the town's Board of Health ("BOH").
2. BOH members are responsible for issuing permits and certificates of compliance for new septic system installations in Newbury. First, if tests on the property yield acceptable results, and if the permit application is in order, a BOH member will issue a permit for the installation of the septic system. Subsequently, three inspections are conducted while the system is being installed. If the installation passes these three inspections, and an as-built plan is submitted to the BOH, a member of the BOH will issue a certificate of compliance for the septic system.
3. Between March 1996 and August 1998, Tevald handled most of the septic system installation inspections for the BOH.
4. In or about 1995, Manter Construction Company, Inc., whose president is Warren Manter, secured approval to construct Fatherland Farms, a 120-acre, 42-lot subdivision in Newbury. Manter Construction began site work in 1995, and began constructing houses in 1996.
5. Between March 1996 and August 1998, Tevald approved no fewer than 27 septic system permit applications and 21 certificates of compliance for Manter Construction in the Fatherland Farms development. He also conducted the vast majority of the inspections performed in connection with those permit applications and certificates of compliance.

6. In or about March of 1996 Tevald learned that he was going to lose his Newbury home to foreclosure, and that he would need to secure new housing.
7. Shortly thereafter, in or about April of 1996, Tevald and Manter discussed the possibility that Tevald would purchase a home in Fatherland Farms. Because of his then current financial situation, Tevald was not in a position to secure bank financing for a purchase, and Manter agreed to rent him a home for a defined period, after which Tevald would have the option to purchase the home from Manter.
8. In or about July 1996, Tevald and Manter entered into a two-year lease/purchase agreement for a home in Fatherland Farms. The lease obligated Tevald to pay Manter \$2,050 per month in rent, and provided an option for Tevald to purchase the property at the end of the lease term for \$250,000. (The rental payments and the purchase price appear to have been at fair market value.)
9. Most of Tevald's rent payments to Manter were significantly late: seven were more than 90 days late, four were between 60 and 90 days late, and another three were between five and 60 days late. Only the first three payments were made on time.
10. Manter never charged Tevald any interest on late payments, and never made any effort to evict Tevald for late payment. During this period of time Tevald was making improvements to the property which Manter would otherwise have been required to make.
11. According to Manter and Tevald, they orally agreed that Tevald could forgo making the final seven rental payments, totaling \$14,350, altogether, to offset the value of Tevald's improvements to the property.
12. Forgoing this \$14,350 in rent payments put Tevald in a better position to qualify for mortgage financing to purchase the home.
13. In August 1998, Tevald purchased the home in Fatherland Farms from Manter. The closing documents do not mention the agreement between the parties to offset rent due with a credit for improvements made to the property.
14. Tevald never made a public, written disclosure of his lease/purchase relationship with Manter. According to the Board of Selectmen chair, however, both he and the third selectmen were aware that Tevald was renting from Manter and still inspecting septic systems in Fatherland Farms.

Conclusions of Law

15. As a selectman and as a BOH member, Tevald is, as he was during the relevant time period, a municipal employee as that term is defined in G.L. c. 268A, §1.
16. Section 23(b)(3) of G.L. c. 268A prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

17. By issuing 27 permits to install septic systems to Manter Construction while he was Manter's tenant, by conducting the vast majority of the inspections of those systems, and by issuing 21 compliance certificates to Manter Construction during the period that Tevald was either (i) in discussions with Manter about moving in to a home in Fatherland Farms or (ii) Manter's tenant and the likely purchaser of the home, Tevald knowingly or with reason to know, acted in a manner which would cause a reasonable person, having knowledge of all the relevant circumstances, to conclude that Manter and/or Manter Construction could unduly enjoy Tevald's favor in the performance of his official duties.^{1/} Tevald did not file any written disclosure regarding these circumstances. Therefore, in so acting, Tevald violated G.L. c. 268A, §23(b)(3).

18. The appearance of a conflict of interest created by Tevald's actions was exacerbated by the fact that, as a BOH inspector, he was in a position to expedite or delay the processing of Manter Construction's permit applications, the performance of inspections, and the issuance of certificates of compliance. The failure to conduct inspections and issue permits and certificates in a timely manner can be frustrating and costly to a party seeking to install a septic system. In this case there was no evidence of such improper behavior.

19. The appearance of a conflict of interest created by Tevald's actions was further exacerbated by the following: (i) while Manter's tenant, Tevald consistently paid his rent late with no penalty or sanction from Manter, (ii) Manter and Tevald did not document the offsets that entitled Tevald to forgo paying \$14,350 in rent, and (iii) Manter's willingness to forgo the \$14,350 in rent in exchange for Tevald's completion of the construction was instrumental in enabling Tevald to qualify for a mortgage.

Resolution

In view of the foregoing violations of G.L. c. 268A by Tevald, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Tevald:

(1) that Tevald pay to the Commission the sum of \$1,500.00 as a civil penalty for violating G.L. c. 268A, §23(b)(3); and

(2) that Tevald waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: July 31, 2001

^{1/}Tevald recused himself from any involvement with the permits, certificates of compliance, or inspections on the lot he intended to purchase.